

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHS INC.,

Plaintiff,

vs.

**ABENGOA BIOENERGY NEW
TECHNOLOGIES, LLC, ABENGOA
BIOENERGY COMPANY, LLC, AND
ABENGOA BIOENERGY OF
NEBRASKA, LLC,**

Defendants.

8:15CV429

MEMORANDUM AND ORDER

This matter is before the Court on the Suggestion of Bankruptcy (Filing No. 27) filed by Defendant Abengoa Bioenergy New Technologies, LLC, and the letter dated April 15, 2015 (the “Letter”), from counsel for Abengoa Bioenergy New Technologies, LLC a/k/a Abengoa Bioenergy New Technologies, Inc. (“ABNT”), Abengoa Bioenergy Company, LLC (“ABC”) and Abengoa Bioenergy of Nebraska, LLC (“ABNE”) (collectively the “Abengoa Defendants”) that appears at Filing No. 28. Also before the Court is the Status Report (Filing No. 29), filed by Plaintiff CHS Inc. (“CHS”).

BACKGROUND

On February 24, 2016, ABC and ABNE, along with certain other affiliated entities, voluntarily filed jointly-administered Chapter 11 bankruptcy cases in the U.S. Bankruptcy Court for the Eastern District of Missouri (the “Missouri Bankruptcy Court”), which is currently pending as Case No. 16-41161, styled *In re Abengoa Bioenergy US Holding, LLC, et al.* (the “Missouri Bankruptcy Case”). Pursuant to the filing of the Missouri Bankruptcy Case, ABNE requested that its involuntary Chapter 7 bankruptcy case pending in the U.S. Bankruptcy Court for the District of Nebraska (the “Nebraska

Bankruptcy Court”), in Case No. 16-80141, styled *In re Abengoa Bioenergy of Nebraska, LLC*, (the “Nebraska Bankruptcy Case”) be converted to a Chapter 11 case and transferred to, and jointly administered with, the Missouri Bankruptcy Case. On March 1, 2016, the Nebraska Bankruptcy Court granted ABNE’s requests, converted the case to Chapter 11 and transferred the Nebraska Bankruptcy Case to the Missouri Bankruptcy Court. On March 4, 2016, the Nebraska Bankruptcy Case was closed.

ABC also requested that its involuntary Chapter 7 bankruptcy case pending in the U.S. Bankruptcy Court for the District of Kansas (the “Kansas Bankruptcy Court”), in Case No. 16-20178, styled *In re Abengoa Bioenergy Company, LLC*, (the “Kansas Bankruptcy Case”) be converted to a Chapter 11 case and transferred to, and jointly administered with, the Missouri Bankruptcy Case. On February 29, 2016, the Kansas Bankruptcy Court converted ABC’s bankruptcy case to Chapter 11 and, on March 1, 2016, transferred the Kansas Bankruptcy Case to the Missouri Bankruptcy Court.

On April 6, 2016, ABNT, along with certain other affiliated entities, voluntarily filed a jointly-administered Chapter 11 bankruptcy case in the U.S. Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”), which is currently pending as Case No. 16-10790, styled *In re Abeinsa Holding Inc., et al.* (the “Delaware Bankruptcy Case,” referenced together with the Missouri Bankruptcy Case as the “Pending Bankruptcy Cases”). ABNT filed a Suggestion of Bankruptcy with this Court on April 15, 2016. (Filing No. 27.) The parties represent to the Court that other recently-filed U.S. and foreign bankruptcy and insolvency proceedings (collectively, the “Affiliate Insolvency Proceedings”) are currently pending with respect to many national and international affiliates of the Defendants.

DISCUSSION

Due to the Pending Bankruptcy Cases, the automatic stay under 11 U.S.C. § 362 stays all claims of CHS against the Defendants in this case. CHS has not applied for, and has not received, relief from the automatic stay in any proceeding, but stated in its Status Report that it reserves the right to do so. Despite the additional bankruptcy filings with respect to the Abengoa Defendants and its affiliates, both parties agree that it is inappropriate to refer this case to the Nebraska Bankruptcy Court. Local General Rule 1.5(a)(1) states that, with respect to civil cases, “[u]pon the filing of a suggestion in bankruptcy, or other notification that a party to a civil case is a debtor in a bankruptcy case, the court issues an order staying further proceedings in the case as to the party in bankruptcy.” NEGenR 1.5(a)(1). Local Rule 1.5 further states that “[i]f any party files a motion requesting referral of the case to the bankruptcy court, the case is referred to the bankruptcy court for further action.”

CHS describes the many bankruptcy proceedings involving the Defendants and their affiliates as one of “the largest and most complex international restructuring efforts in recent history.” (Filing No. 29.) It is unclear at this time to what extent those proceedings may affect the Pending Bankruptcy Cases and this case. It is noted that the proceedings were recently initiated and/or procedurally consolidated. The parties acknowledge that additional consolidation may occur and some issues in this case may become moot due to the pending bankruptcy proceedings. The Court agrees that referral to the Nebraska Bankruptcy Court under NEGenR 1.5(a) is premature at this time.

Accordingly,

IT IS ORDERED:

1. The Suggestion of Bankruptcy (Filing No. 27) filed by Defendant Abengoa Bioenergy New Technologies, LLC, is noted for the record and the Clerk of Court is directed to terminate Filing 27 as a pending matter;
2. This case is stayed as to all parties until further order of the Court; and
3. On or before September 6, 2016, the parties shall file a status report with this Court regarding the status of the bankruptcy proceedings and addressing whether this case should remain pending in this Court.

Dated this 9th day of May, 2016

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge